



**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Order Filed on November 25, 2020
by Clerk
U.S. Bankruptcy Court
District of New Jersey

In re:

FRUTTA BOWLS FRANCHISING, LLC,

Debtor.

Chapter 11

Case No. 19-13230 (MBK)

Hearing Date and Time:
November 25, 2020, at 11:30 a.m.

ORDER APPROVING BIDDING PROCEDURES AND RELATED RELIEF IN CONNECTION WITH MOTION OF ANDREA DOBIN, CHAPTER 11 TRUSTEE, FOR (A) SALE OF DEBTOR'S ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES PURSUANT TO 11 U.S.C. § 363(b), (f), AND (m); (B) ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS PURSUANT TO 11 U.S.C. § 365; AND (C) GRANTING RELATED RELIEF

(Revised as of November 25, 2020)

The relief set forth on the following pages, numbered two (2) through six (6), is hereby

ORDERED.

DATED: November 25, 2020

A handwritten signature in black ink, appearing to read "Michael B. Kaplan".
Honorable Michael B. Kaplan
United States Bankruptcy Judge

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Debtor: Frutta Bowls Franchising, LLC

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Caption of Order: Order Approving Bidding Procedures and Related Relief in Connection with Motion of Andrea Dobin, Chapter 11 Trustee, for (A) Sale of Debtor's Assets, Free and Clear of Liens, Claims and Encumbrances Pursuant to 11 U.S.C. § 363(b), (f) and (m); (B) Assumption and Assignment of Certain Contracts Pursuant to 11 U.S.C. § 365; and (C) Granting Related Relief

THIS MATTER having been presented to the Court by McManimon, Scotland & Baumann, LLC, counsel for Andrea Dobin, Chapter 11 Trustee ("Trustee") for Frutta Bowls Franchising, LLC, Chapter 11 debtor ("Debtor") upon the filing of her motion for an Order approving bidding procedures and for related relief ("Bidding Procedures Motion") relating to Trustee's Motion to approve (A) sale of the Debtor's assets (the "Transferred Assets") plus additional consideration for the outstanding accounts receivable, on same or improved terms as Purchaser's (defined below) offer, free and clear of all liens, claims, and encumbrances pursuant to 11 U.S.C. § 363(b), (f), and (m) to Frutta Bowls Franchisor, LLC, or its designee ("Purchaser") pursuant to its Agreement of Sale ("Sale Agreement"); (B) assumption and assignment of certain executory contracts pursuant to 11 U.S.C. § 365 ("Assumed Contracts"); and (C) granting related relief (the "Sale Motion"; and notice of the Bidding Procedures Motion having been provided to the Office of the United States Trustee, counsel to the Debtor, counsel to the Debtor's principals, counsel to the Official Committee of Unsecured Creditors, Purchaser, Notice of Appearance Parties, franchisees, all potential bidders, and any other party set forth in the Certification of Service; and the Court having considered the pleadings filed by the Trustee in support of the Bidding Procedures Motion and any objections thereto, if any; and for other good cause having been shown,

IT IS HEREBY ORDERED that:

1. **Bid Deadline and Auction.** In the event the Trustee receives one or more qualified bids from bidders pursuant to the terms of this Order ("Qualified Bidders") on or before December 10, 2020, by 5:00 p.m. ("Bid Deadline"), an auction will be conducted on December

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17, 2020, at 10:00 a.m. or at a time designated by the Court. ("Auction"). The manner of conducting the Auction will be determined at a later date after the number of Qualified Bidders is established. The process will be consistent with the Court's COVID-19 protocols and notions of due process and fairness. If the Trustee does not receive a qualified bid on or before the Bid Deadline, she will not conduct the Auction and will designate Purchaser's bid as the successful bid ("Successful Bid"). The Trustee will provide counsel to the Committee a list of the bids received, and what she has deemed to be a Qualified Bid (defined below) or not a Qualified Bid, with a summary of the basis for such determinations, within two (2) days of the Bid Deadline.

2. **Qualification to Bid:** To qualify to participate in the Auction, on or before the Bid Deadline, a bidder must (1) submit a binding and irrevocable offer to purchase the Transferred Assets for at least \$425,000, plus additional consideration for the outstanding accounts receivable, on same or improved terms as Purchaser's offer, (2) tender a \$50,000 deposit (\$40,000 for the Transferred Assets; \$10,000 for accounts receivable) ("Deposit") to the Trustee on or before the Bid Deadline, (3) submit a written Agreement of Sale in substantially the same form as the Sale Agreement submitted by Purchaser ("Competing Agreement of Sale"),¹ which, for the avoidance of doubt, shall be a binding offer to purchase the Debtor's assets notwithstanding court order(s), if any, sustaining an objection to the assumption and assignment of a contract designated by the bidder for assumption and assignment over the reasonable efforts

¹ The Competing Agreement of Sale must be accompanied by a redlined version comparing it to the original Sale Agreement.

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of the Trustee, in her reasonable discretion, to effectuate such assumption and assignment², (4) provide evidence of the bidder's ability to consummate the proposed transaction set forth in its bid with available cash resources, (5) provide adequate assurance of future performance in connection with assumption and assignment of the Assumed Contracts, including extensive disclosure regarding its personnel and their experience, its intentions with regard to operation of the franchise system, material changes anticipated, any prior involvement with the Debtor or its principals and financial ability to invest in the system; (6) agree that if its bid is deemed a "Qualifying Bid" and selected as the next highest or next best bid after the "Successful Bid," it will serve as the "Backup Bidder" (as defined below); and (7) agree that in the event it cannot close as either as the party who submits the "Successful Bid" (the "Successful Bidder") or the "Backup Bidder" (as defined below), it agrees to forfeit the entirety of the Deposit (collectively, a "Qualified Bid"). To the extent that there are Qualifying Bids, Purchaser, by submitting its stalking horse bid, has agreed to be a "Backup Bidder" (as defined below) in the event it is outbid by another Qualified Bidder (as defined in Paragraph 3 hereof).

3. **Qualified Bidders:** Any bidder that meets the qualifications set forth in Paragraph 2 will be deemed a "Qualified Bidder," subject to the Trustee's business judgment after consultation with counsel to the Committee. Only Qualified Bidders that have submitted Qualified Bids by the Bid Deadline will be permitted to bid at the Auction.

² All holders of executory contracts will be given explicit notice of the designated assumption, assignment, and cure amount proposed in the Assumption and Assignment and be advised of the deadline to object to said designation.

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4. **No Contingent Bids:** For the avoidance of doubt, a bid will be not deemed a Qualifying Bid if it is subject to financing, due diligence, or any other contingency, except the entry of an Order of this Court approving the sale.

5. **The Auction Format:** At the Auction, after the initial opening bid, which amount shall not be less than \$425,000, plus additional consideration for the accounts receivable on same or improved terms as Purchaser, all subsequent competing bids shall be in \$5,000 increments; *provided, however,* the Trustee may announce at the Auction, modified bidding increments as appropriate, subject to the Trustee's business judgment after consultation with counsel to the Committee.. No bid shall be of the same amount as any existing bid. Change in any terms of bids or bids made after the bidding is concluded at the Auction will not be considered. The Trustee has the right to designate and qualify a back-up bidder ("Back-Up Bidder") subject to her business judgment after consultation with counsel to the Committee. In such an event, the Deposit remitted by the Back-up Bidder will remain held in trust by the Trustee pending the Closing by the Successful Bidder in accordance with either the Sale Agreement or Competing Agreement of Sale. If after the expiration of thirty (30) days after the entry of the Sale Order a closing has not occurred the Back-Up Bidder may make a written demand to Trustee's counsel for the return of its Deposit (the "Back-Up Bidder Deposit Demand") and Trustee's counsel shall return the Deposit to the Back-Up Bidder within five (5) business days of the receipt of the Back-Up Bidder Deposit Demand.

6. **Failure to Close:** In the event that an Auction is conducted and if the Successful Bidder named at the Auction fails to consummate the transaction provided for in the Competing

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Agreement of Sale, as applicable, the Trustee will process a sale to the Back-Up Bidder in accordance with the terms of the applicable agreement, and the Successful Bidder will be liable for and forfeit any Deposit. Similarly, if the Back-Up Bidder fails to consummate the transaction provided for in a Competing Agreement of Sale, as applicable, it too will be liable for and forfeit any Deposit.

7. **Bankruptcy Court Approval:** The sale of the Transferred Assets is subject to the entry of an Order by the Court: (a) approving the sale and transfer of the Transferred Assets, free and clear of all liens, claims and encumbrances pursuant to 11 U.S.C. §363(b), (f) and (m); (b) authorizing the assumption and assignment of executory contracts, pursuant to 11 U.S.C. §365; and (c) granting related relief.

8. **The Sale Hearing:** A hearing to confirm the results of the Auction, if any, and/or to approve the sale of the Property will be conducted immediately following the Auction ("Sale Hearing"), or as soon thereafter as is practical.

9. **Modifications:** The Trustee reserves the right to exercise her business judgment, following consultation with counsel to the Committee to: (i) impose additional or different reasonable terms and conditions at or before the Auction, (ii) extend the deadlines set forth in the sale procedures and/or adjourn the Auction and/or the Sale Hearing without further notice, and (iii) reject any and all bids that are not from Qualified Bidders.

10. **Disclaimer:** Each Qualified Bidder, by submitting a bid for the Transferred Assets, shall be deemed to acknowledge and represent:

- that it is bound by the Bidding Procedures contained herein;

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- that it had an opportunity to inspect and examine information relating to the Transferred Assets and Debtor's business, and to review all pertinent documents and information with respect to the Transferred Assets prior to making its offer and that it relied solely on that review and upon its own investigation, own independent review, investigation and/or inspection of any documents and/or the Transferred Assets in making its bid; and
- that it did not rely upon any written or oral statements, warranties or representatives of the Trustee, Trustee's agents, Debtor, Debtor's agents regarding the Transferred Assets, or the completeness of any information provided in connection with the Transferred Assets, the bidding process or the Auction.